IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 18 OF 2006

Shri Ranjit Satardekar,
major, married, legal practitioner,
residing in Flat D1/2, Cedmar Apts,
M. G. Road, Panaji, Goa. ..... Appellant

V e r s u s

1. Smt. Clotildes Fernandes,
   major, widow, housewife, residing
   at Caranzalem, Ilhas, Goa.

2. Shri Jose Mathias,
   major, married, businessman,
   3rd floor, Mathias Plaza Bldg.,
   18th June Road, Panaji, Goa.

3. Smt. Mariola Mathias,
   major, wife of Jose Mathias,
   3rd floor, Mathias Plaza Bldg.,
   18th June Road, Panaji, Goa.

4. Shri Sadiq Shaikh,
   major, married, businessman,
   residing at Duplex Bungalow,
   Near Hotel Libdoran, Miramar,
   Panaji, Goa.

5. Smt. Sadia Shaikh,
   major, wife of Sadiq Shaikh,
   residing at Duplex Bungalow,
   Near Hotel Libdoran, Miramar,
   Panaji, Goa.

6. Smt. Vijaya Satardekar,
major, married, businesswoman,
residing in Flat D 1/2, Cedmar
Apartment, M. G. Road, Panaji, Goa. ..... Respondents

Mr. A. F. Diniz, Advocate for the Appellant.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. A. D. Bhobe, Advocate for Respondent no.1.

Mr. M. S. Sonak, Advocate for Respondent nos. 2 and 3.

CORAM: N. A. BRITTO, J.

DATE: 13th April, 2006.

J U D G M E N T

Admit. By consent heard forthwith.

2. The short question for consideration in this appeal filed against Order dated 01.02.2006, is whether the spouse of an heir in Inventory Proceedings, has a separate and independent right to participate in licitation proceedings? The said controversy is in relation to Article 1412 of the Portuguese Civil Procedure Code, 1939, (Code, for short), which when translated, reads as follows:

> "The licitation is an auction to which only heirs and the moiety holder spouse are admitted, except the cases where, in terms of preceding Articles, the donee or the legatee should also be admitted. It may fall over the properties of the inheritance which are not necessarily to be allotted to any particular party.
>
> Each item shall be put to bid separately, except where all agree to form lots for that purpose, or where there are some which cannot be separated without inconvenience.
>
> Different parties, may, by agreement, offer a bid over the same item or lot so that it may be allotted to them in common in the partition."

3. Some facts are required to be set out to dispose of the present appeal and to understand the controversy. Inventory Proceedings under No.310/2004/B are being held to partition the estate left by Andre Andrade, and, his widow Clothildes Fernandes has been appointed as an Administrator in the said Proceedings. The said Andre Andrade and Clothildes Fernandes, have one son and four daughters and subsequently, the said Clothildes Fernandes, has come to own 80% share in the estate of

the said Andre Andrade. One of the daughters of the said deceased Andre Andrade and Clothildes Fernandes by name Vijaya Andrade, was married to one Raghunath Narvenkar and the said marriage came to be dissolved as a result, 20% share held by them namely the said Vijaya Andrade and Raghunath Narvenkar, came to be divided equally between them. Smt. Vijaya Andrade, sold her 10% share to Shri Joe Mathias (R-3 in inventory proceedings) by Sale Deed dated 01.07.1998, and thus stepped into the shoes of the said Smt. Vijaya Andrade, as an heir. The said Vijaya Satardekar, (R-1 in Inventory Proceedings) along with Shri Sadiq Shaikh (R-4), purchased the other 10% share from Raghunath Narvenkar, divorced husband of Smt. Vijaya Andrade, vide Sale Deed dated 08.01.1991 and thus stepped into the shoes of the said Raghunath Narvenkar.

4. The cynosure of the eyes of respondents Vijaya Satardekar and her husband Ranjit Satardekar (R-1 and R-2 in I.P.) on one hand, and Shri Joe Mathias (R-3), has been a property which is enlisted under verba/item no.86 and admeasuring about 86,053 sq. meters and in the licitation/auction subsequently held on 10.02.2006, the said Joe Mathias has been declared as the highest bidder. Smt. Vijaya Satardekar had entered into an agreement dated 15.07.2002 with the said Administrator

Smt. Clotildes Fernandes, who is stated to be now 82 years old. By virtue of the said agreement dated 15.07.2002, Smt. Vijaya Satardekar and the Administrator Clotildes Fernandes, agreed to pull their resources together for offering a joint bid in the licitation and agreed that they would not bid against each other in respect of any property and that they would offer a joint bid for each of the properties in the said auction, in view of the common apprehension that in case licitation took place in the said I.P., other interested parties therein, being professional builders, may use their powerful financial positions to out bid them and thereby deprive them of any share in the properties which would be the subject matter of the licitation.

5. It has been stated by respondent Joe Mathias that the apprehension that he might take the said property for a paltry amount formed the basis of various objections lodged by respondent Ranjit Satardekar and his wife Vijaya Satardekar from time to time and one of such apprehension formed the basis of C.R.A. No.116/2000 filed before this Court and also of Writ Petition No.1/2005 filed by them before this Court.

6. The licitation which was initially fixed on 3-6-2000 ultimately

commenced on 31-1-2006. On this day, the respondent Vijaya Satardekar as well as respondent Ranjit Satardekar bidded for verba/item no.45 and the bidder went in favour of Shri Ranjit Satardekar for Rs.72/- but only to be cancelled subsequently at the behest of Ranjit Satardekar himself. On 3-3-2006 respondent Ranjit Satardekar moved an application stating that there was a mistake in putting the said verbas/item nos. 45 to 85(A) which pertained to cash amounts and as a result of the said application, by Order dated 7-3-2006 a corrigendum came to be issued and the minutes of licitation were corrected by deleting verbas/item nos.45 to 85(A) and the same were ordered to be distributed between the Administrator and other interested parties as per their shares. The Administrator nor the other interested parties took objection to Smt. Vijaya Satardekar and her husband Shri Ranjit Satardekar in bidding for the said verbas/item numbers.

7. Two applications came to be filed by respondent Smt. Vijaya Satardekar dated 31-1-2006 which came to be disposed of, by Order dated 1-2-2006, impugned herein. Both the said applications were allowed by the learned Civil Judge, Senior Division, thereby allowing respondent Smt. Vijaya Satardekar to offer joint bid along with the Administrator Smt. Clothildes Fernandes. Consequently the Administrator came to be

restrained to bid independently as whatever bid to be offered by the Administrator would become the joint bid of respondents Shri Ranjit Satardekar and Smt. Vijaya Satardekar. On 1-2-2006 and 2-2-2006 the licitation continued and many of the verbas/items of the list of properties came to be taken jointly by respondent Smt. Vijaya Satardekar and the Administrator Clothildes Fernandes. On 10-2-2006 respondent Smt. Vijaya Satardekar filed an application before the learned Civil Judge, Senior Division placing on record the fact that she had requested the Administrator Clothildes Fernandes to submit their joint bid at Rupees one higher than respondent Joe Mathias and/or Sadiq Shaikh or Rs. 21 crores whichever was lower in respect of the property listed at serial no.86(bearing survey nos.249/1-A, 249/2 and 255/1 of Village Taleigao admeasuring 83160, 937 and 1956 sq. meters respectively). Consequently the Administrator did offer a joint bid of Rs.21 crores for the said item no.86 but the respondent Joe Mathias outbidded the joint bid of the Administrator Clothildes Fernandes and respondent Smt. Vijaya Satardekar by offering Rs.21 crores and Rs.1000/-. In other words, respondent Joe Mathias became the highest bidder to the said property of verba/item no.86. The licitation was completed on that day after the remaining items were also bidded by the parties. The respondent Shri Ranjit Satardekar filed an application dated

6-2-2006 for the review of the impugned Order dated 1-2-2006 but the same came to be dismissed by Order dated 8-2-2006.

8. On behalf of the appellant Shri Ranjit Satardekar, two submissions have been made. Firstly, it is submitted that respondent Ranjit Satardekar was kept out of licitation by a side wind, so as to say, since participation in licitation by Shri Ranjit Satardekar was not at all the subject matter of the applications disposed of by the learned Civil Judge by Order dated 1-2-2006. It is also submitted that Article 1412 provides that "moiety holder spouse is also entitled to take part". It is submitted that in any event this is a fit case for a remand to enable the learned Civil Judge, Senior Division, to hear the appellant and to dispose of his plea that he as a moiety holder spouse of Vijaya is also entitled independently to participate in the licitation. It is submitted that the appellant was knocked out without hearing him and thereby violating the principle of natural justice since while considering the said applications filed by respondent Vijaya Satardekar the issue whether respondent Ranjit as a spouse of Vijaya could participate in the licitation was not at large before the learned Civil Judge. On the other hand, it is contended on behalf of the respondent no.2 that the respondent Smt. Vijaya Satardekar and her spouse respondent Ranjit Satardekar have

taken full advantage of the Order dated 1-2-2006 and they have taken part in the licitation proceedings inasmuch as a joint bid of Rs.21 crores was submitted by the Administrator Clothildes Fernandes and respondent Vijaya Satardekar and this was obviously with the consent of the respondent Ranjit Satardekar and that this appeal is nothing but collusive proceedings between both the respondents namely, Vijaya Satardekar and Ranjit Satardekar and that the respondents Smt. Vijaya and Ranjit having taken their chance at the said auction held on 2-2-2006 and 10-2-2006 and cannot now be permitted to turn back and question the very same auction proceedings. It is submitted that the Order dated 1-2-2006 came to be passed upon the application made by respondent Vijaya Satardekar to that effect and the respondent Ranjit Satardekar supported the application made by her and in such a situation the present appeal at the behest of respondent Ranjit Satardekar is clearly not maintainable or in any event it ought not to be entertained.

9. Admittedly, by virtue of Sale Deed dated 8-1-1991 respondents Smt. Vijaya Satardekar and Shri Sadiq Shaikh stepped into the shoes of Shri Raghunath Narvenkar, the divorced husband of Smt. Vijaya Andrade and thus became heirs as contemplated by Article 1412 of the Code. The

respondent Ranjit Satardekar intervened in the proceedings subsequently by making an application, and presumably without the objection of other interested parties, and presumably under Article 1375 of the Code. After the purchase of the said 10% share by respondent Smt. Vijaya Satardekar along with the said Sadiq Shaikh, she held the same as wife of respondent Ranjit Satardekar in communion with him and of which the latter became its Manager or Administrator. In this context, reference could be made to Article 1117 of the Portuguese Civil Code, 1867 which provides that the ownership and possession of the common properties vest in both the spouses during the subsistence of the marriage; however the administration of the properties of the couple without exclusion of the exclusive properties of the wife, belongs to the husband; and also to Article 1189 of the aforesaid Code which provides that the management of all the properties of the conjugal Society belongs to the husband, and it belongs to the wife only in case of absence or impediment of the former. Article 1193 of the same Code provides that the wife shall not acquire or alienate properties or contract obligations without the authorisation of the husband, except in cases where the law specifically permits it. The sole para of Article 1193 further provides that in case the husband denies without any reason the authorisation asked by the wife, she may apply to the respective Civil Judge

to make it good and the Judge shall grant or reject it, as he thinks fit, after hearing the husband.

10. It is nobody's case that when Smt. Vijaya Satardekar acquired the said share in the properties by Sale Deed dated 8-1-1991 she did not have the consent of her spouse Ranjit Satardekar or for that matter, when she participated in the licitation jointly along with the Administrator.

11. It is not at all necessary that the matter should be remanded to the learned Civil Judge, Senior Division for a decision in the controversy involved. As seen from Article 1412 of the Code, a licitation is an auction to which only the heirs and the moiety holder spouse are admitted. The expression "moiety holder spouse" therefore by no stretch of imagination can refer to the moiety holder/s of the heir/s but to moiety holder of the deceased spouse upon whose death the inventory proceedings are initiated. In other words, the expression "the moiety holder spouse" appearing in Article 1412 of the Code refers to the spouse of the deceased person, pursuant to whose death the inventory proceedings have been initiated.

12. By no stretch of imagination it can be said that the expression moiety holder refers to the moiety holder of the heir. If the expression "the heirs and the moiety holder spouse" is interpreted in a manner suggested on behalf of appellant then we will be admitting to licitation the heirs and their spouses by leaving the moiety holder out of the licitation which could never have been the intention of the Legislator. It is interesting to note that the heirs(herdeiros) are referred to in plural and moiety holder(conjuge meeiro) is referred to in singular and therefore the expression moiety holder cannot be interpreted to be referring to the moiety holder spouses of the heirs. The expression is not "the heirs and their moiety holders" (os herdeiros e seus conjuges meeiros" but "the heirs and the moiety holder"(os herdeiros e o conjuge meeiro).

13. Article 1369 of the Code deals with filing of application for inventory proceedings and para 2 thereof defines the expression "party" to include the heir, the moiety holder of the deceased and the persons benefited with the usufruct of part of the inheritance without specification of value or object. Article 1371 of the Code provides for summons to the parties and, inter alia, provides that when proceedings are not dropped,

time shall be fixed for submission of list of properties and of the documents which the Administrator could not produce immediately and summons for the purpose of inventory shall be issued to the Public Prosecutor, to the heirs, to their spouses, except when the marriage was under the regime of absolute separation of properties and to the legatees and creditors, there being however no need to issue summons to the Administrator even though he is an heir or representative of the heir. Para 1 of Article 1371 of the Code provides that the lack of service of summons to the heirs, to their spouses and to the Public Prosecutor, is subject to the regime of the lack of service of summons to the defendants. Article 1371 of the Code, particularly para 1 thereof shows that whenever the Legislator has desired to confer separate and independent rights upon the heirs as well as their spouses, a specific provision to that effect has been made in the Code. If Smt. Vijaya Satardekar has stepped into the shoes of an heir to the estate being partitioned and if she holds the said share or property in communion with her spouse Ranjit Satardekar it does not sound to reason that each one of them would be entitled to separately and independently bid in licitation/or auction. Since respondent Ranjit Satardekar is the spouse of Smt. Vijaya Satardekar who had purchased the said share or undivided right in the said properties of inheritance the right of administering or managing

the same is that of respondent Ranjit and only in the event that there was dispute between both the spouses namely, Vijaya and Ranjit that Smt. Vijaya had to get her consent substituted as provided by sole para of Article 1193 of the Civil Code, 1867. Here, we have a case where Smt. Vijaya Satardekar as an heir took part in the licitation along with the Administrator pursuant to the agreement between them, and as the submissions recorded by the learned Civil Judge in her Order dated 1-2-2006 shows Smt. Vijaya bidded at the said auction along with the Administrator not only with the consent of her spouse Shri Ranjit Satardekar but almost as his alter ego. It is not the case of Ranjit Satardekar that he did not support his spouse Smt. Vijaya either in the said agreement dated 15-7-2002 or for that matter in the application filed by her dated 10-2-2006 that minimum bid of Rs.21 crores should be offered to the property of verba/item no.86 which accordingly was offered by the Administrator on her behalf as well as that of respondent Smt. Vijaya. Smt. Vijaya Satardekar having thus taken part in the licitation along with the Administrator Clothildes Fernandes with tacit support and consent of her spouse Ranjit Satardekar, Ranjit Satardekar as a spouse of the heir Smt. Vijaya Satardekar would not have a separate and independent right to participate in the said auction. The right to participate is that of the heir

and in case she is a lady then it is that of her husband being the Administrator and the Manager of the joint properties. As pointed out on behalf of respondent Joe Mathias by his Counsel Mr. M. S. Sonak the interpretation suggested on behalf of interested party of respondent Ranjit, if accepted is also capable of inculpable mischief. In inventory proceedings, the party who submits the highest bid, but fails to deposit the bid amount within the period stipulated by law, is debarred from taking part in the auction proceedings to be held thereafter and in case of the interpretation suggested by the respondent Ranjit Satardekar is to be accepted the spouse of the debarred party will once again insist upon the submission of the bid at the auction and in the event, such bid is again adjudged the highest, the debarred party will also acquire interest in the auctioned property and what the law prohibits directly cannot be achieved in an indirect manner.

14. On a correct interpretation of Article 1412 of the Code, in my view, only the heirs(and not their spouses) and the moiety holder spouse are entitled to participate in the licitation. There is no separate right to the heir and his or her spouse to participate in the auction. Whenever the heir is a woman and her husband unduly withholds his consent in participating in the auction then such consent can be got substituted as per the Article of

the Civil Code, 1867 referred to herein above.

15. The above view was held by the Portuguese Supreme Court by decision dated 3-2-1953, relied upon by the learned Senior Counsel on behalf of the Administrator Clothildes Fernandes. In that case, the heir was Emilia Adelaide Pinto and she wanted to take part in the licitation but her husband Ferreira Diniz referring to Articles 1189 and 1193(referred to herein above) objected to her taking part that she could not do so without the permission of her husband as it was not for the wife but for the husband who was entitled to execute the acts of the administration of the couple and he applied that he alone be allowed to take part in the licitation and the trial Court did not allow the husband Ferreira Diniz to take part holding that such right belonged exclusively to the said heir but as an heir she was entitled to that right to take part in auction with express negation of authorisation of her husband. In appeal, the High Court at Porto held that the husband Ferreira Diniz could be allowed to licitate along with his wife as she could not licitate alone, without the authorisation of her husband or without his consent having been substituted. In appeal, by the heir Emilia Adelaide Pinto de Mesquita, the Supreme Court held, as a very head note shows, that it is only the heirs, and not their spouses who can be admitted

to take part in the licitation in inventory proceedings. The Supreme Court referred to Article 1412 of the Code and opined that licitation is an auction and through it only the heirs are admitted and the moiety holders/spouse, besides, the donors and legatees, it being understood that the moiety holders spouse does not include the moiety holder spouse of the heir but only the inventariado as to what follows from the analysis of unique 2 of Article 1369 of the Code. Consequently, held the Supreme Court, that only the heir and not his spouse could be allowed to participate in the licitation and thus only Emilia Adelaide, the heir of the inventariado deceased alone could be allowed to licitate and not her husband and since the said Ferreira Diniz was married to the said Emilia Adelaide and although they were de facto separated on account of deep differences between them and although he was summoned for inventory in his capacity as the spouse of an heir he continued to be the Administrator of the assets of the couple as per law contained in Article 1189 of the Civil Code and that since it was not shown that he was prevented from the administration or that he was deprived of the same in any lawful manner and that the said Maria Adelaide from what is stated in Article 1193 could not without the permission of her husband acquire assets or take loans except in cases where she applied as per unique of Article 1193 of the Civil Code for substitution of consent in case the same

has been denied to her. Referring to Article 1193 of the Civil Code, the Supreme Court noted that what is mentioned therein prohibited a married woman to acquire assets or to contract obligations without the consent of the husband and that licitation was an act which fell within the powers of the husband, as Administrator of the assets of the couple which administration of the assets was confirmed by Article 1189 of the Civil Code and as a consequence of all that was stated above it was the said Emilia Adelaide Pinto de Mesquita who had the right to licitate in the capacity of an heir and as she was married she could only do it after being authorised by the respondent, her husband by applying for the substitution of consent, in case the same was denied to her.

16. In the light of Article 1412 of the Code, it may be reiterated by way of conclusion that it is only the heir and the moiety holder spouse who are entitled to take part in the licitation and in the event the heir is the wife then it is the husband who is entitled to licitate as the Administrator of the conjugal property and in the event there is a dispute between the two, it is only the wife who can take part in licitation but that is after obtaining substitution of consent. In the case at hand, Smt. Vijaya Satardekar participated in the licitation along with the Administrator pursuant to the

said Agreement dated 15-7-2002 and this she did with the full consent of her husband Shri Ranjit Satardekar, the appellant herein, and being so Shri Ranjit Satardekar has no separate or independent right to participate in the said licitation. Hence, I find there is no merit in this appeal and the same is hereby dismissed with costs.

N. A. BRITTO, J.

RD